

RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

WHEREAS, the Tribal Council by prior resolution directed the public posting of a proposed ordinance providing procedures to be used by the Tribal Utility Authority before disconnecting a customer's water and sewer service, and

WHEREAS, the Tribal Council has been advised that the proposed ordinance has been posted for the required ten-day period and that no public comments have been received opposing its final passage, and

WHEREAS, the Tribal Council concludes that it should enact final passage of the Utility Notice and Hearing Ordinance for the welfare and benefit of the people of the White Mountain Apache Tribe so as to ensure fairness of treatment to customers.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby enacts final passage of the Utility Notice and Hearing Ordinance and further directs that said ordinance should be numbered, 136.


The foregoing resolution was on August 03, 1983 duly adopted by a vote of 10 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to vested in it by Article V, Section 1 (i) of the Amended Constitution and By-Laws of the Tribe, ratified by the Tribe June 27, 1958 and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

RECEIVED
AUG 11 1983

FORT APACHE INDIAN
AGENCY
WHITERIVER, ARIZ.



Chairman of the Tribal Council



Secretary of the Tribal Council

ORDINANCE OF
THE WHITE MOUNTAIN APACHE TRIBE

An ordinance providing procedures to be used by the Tribal Utility Authority before it discontinues a customer's water and sewer service, and imposing penalties upon the Authority for failure to implement these procedures.

BE IT HEREBY ENACTED by the Tribal Council of the White Mountain Apache Tribe that Ordinance No. 136 is proposed as follows:

Section 1: Short Title:

This act may be cited as "The Utility Notice and Hearing Ordinance of 1983."

Section 2: Definitions:

(a) conspicuous print: lettering which is in clear black form, positioned so that a customer may find it, and large enough to be easily seen.

(b) curing period: a time span of ten days in which one who has been issued a disconnection notice may remedy his/her delinquency by paying the amount due and owing.

(c) disconnection notice: a warning mailed separately from the bill sent at the end of the permissible payment period which notifies a customer that he/she has 10 days from the postmarked mailing date to either remedy the delinquency or file a timely appeal. It is mailed separately from the monthly bill.

(d) emergency: any unexpected situation which suddenly arises and necessitates the immediate departure of the customer to place other than his/her hometown so to prevent the customer from making arrangements for bill payment.

(e) just cause: any reason designated by the Grievance Committee as one compelling a reasonable person not to pay his/her utility bill on time. Guidelines for determining "just cause" will be prepared by the Grievance Committee.

(f) routine notice: The notice which describes the Utility Authority collection policy and which appears on the back of every billing card mailed out to the customer.

(g) utility billing card: the monthly statement reflecting the amount due for services rendered by the Authority;

the type and amount of services rendered; the due date; the debtor's name and address; creditor's name, address, and telephone number; routine notification; and notification to the customer of the right to appeal.

(h) Utility Grievance Committee: The committee of three individuals who will hear appeals and issue directives regarding a matter which has been appealed.

(i) waiting period: the period during which all actions regarding suspension of services are postponed pending final resolution of a matter.

(j) working days: any regular day of business Monday through Friday, not including weekends and holidays.

Section 3: Purpose:

The purpose of this ordinance is (1) to require utilities to provide notice to customers that their utility account is delinquent and subject to termination unless the account is paid by a specified date; (2) to provide an opportunity for the customer to be heard before an appellate board so that the customer may show just cause as to why utility services should not be suspended; (3) to provide for emergency situations where a customer is unable to appear before the suspension date; (4) to provide alternatives to suspension and to require that suspension of charges occur with the suspension of services; and (5) to delineate the penalties imposed upon lessors, their agents, and landlords, and/or the Utility Authority for failure to provide notice and appellate proceedings to a customer or for harrassment of a customer/tenant.

Section 4: This ordinance shall be liberally construed to effect its objects and to promote justice.

Section 5: Saving Clause:

The ordinance does not affect rights and duties that matured, penalties that were incurred and proceedings that were commenced before its effective date.

Section 6: Jurisdiction:

The White Mountain Apache Tribal Court shall have exclusive jurisdiction over all legal proceedings arising out of this ordinance.

Section 7: Notification; Routine Notification; Disconnect notification:

(a) Routine notification shall appear on the reverse side of each utility billing card. This notification shall

be printed conspicuously in plain English. The notification shall read as follows:

COLLECTION POLICY

All bills are due and payable upon receipt. They are past due 15 days after the statement date. Bills for which payment has not been received 10 days after the past due date are considered delinquent and subject to disconnection. If you need to make arrangements on your account call 338-4825.

(b) If a customer does not pay his/her bill within the time specified in the routine notice, a second notice shall be issued to the customer by the Utility Authority. This notice is the disconnection notice and shall give the customer ten days from the postmarked date to contact the Utility Authority regarding payments or to pay the bill for utilities. The notice shall specify the amount due and the time allowed for the customer to pay the entire bill or to make arrangements with the Authority.

(c) No water or sewer service provided by the Utility Authority shall be disconnected and/or discontinued if the notices described in subsections (a) and (b) of this section have not been issued to the customer. Once services are suspended or are not available for more than 3 days, additional billings for service shall also be suspended until service is restored.

Section 8: Right to Hearing, Procedures; Committee and decisions:

(a) Any customer, who wants to show just cause as to why his/her services should not be suspended, may request a hearing of the Utility Grievance Committee by contacting the Utility Authority within 2 working days after receipt of disconnection notice.

(b) Disconnection of services shall not occur until there is a final resolution of the matter by the grievance committee. If the ten-day curing period has elapsed upon resolution of the matter in favor of the authority, service shall be suspended after 5 additional days. If the ten-day curing period has not elapsed upon resolution of the matter in favor of the Utility Authority, the service shall be suspended after 5 additional days or the remaining curing period, whichever period is longer.

(c) Notice of the right to a hearing shall be printed below the routine notification on each billing card. This notice shall be conspicuously printed and state:

RIGHT TO APPEAL

If you are dissatisfied with the results obtained by an investigation of your bill or service complaint by utility personnel, you have a right to appeal to:

Utility Grievance Committee
Utility Authority
P.O. Box 517
Whiteriver, Arizona 85941
(602) 338-4825

You have two working days from receipt of disconnection notice within which you may file an appeal.

(d) Once a request for hearing has been filed with the Utility Authority, a date shall be set for a hearing. The hearing shall be held within 2 working days from the date of request.

(e) A Utility Grievance Committee shall hear the matter to determine if the customer has shown just cause as to why his water and sewer service should not be suspended. If the just cause is shown, the committee shall issue a directive to the Utility Authority on how to handle this matter. If further dispute exists on behalf of the Utility Authority, the matter may be pursued by either party in the Tribal Court for resolution. Services shall not be suspended during this waiting period.

(f) If a customer pursues legal remedies in Tribal Court, services may be suspended after the additional waiting period or the remainder of the curing period, whichever is greater. Payment must be made to continue services. However, a refund of penalty fees or overcharges may be directed by the Court if resolution of the matter is in favor of the customer.

(g) The Utility Grievance Committee shall consist of: one member of the Utility Authority, two members of the Tribal Grievance Committee, and two tribal members selected at large by the Tribal Court Clerk. The Tribal Court Clerk shall use the tribal rolls to select these members in alphabetical order for 1 afternoon meeting each.

Section 8: Emergency Provision

Whenever a customer has been called away on an emergency, this shall constitute just cause of why his water and sewer services shall not be suspended. The customer shall inform the Authority of this emergency verbally prior to departure and in writing at the commencement of hearing proceedings. Reasonable arrangements for payment of his/her bill shall be made upon his/her return from the emergency.

Section 9: Penalty for Harrassment of Tenant/Customer.

(a) Where the lessors, their agents, and landlords of a building request the suspension of services to a tenant without a justifiable reason and suspension occurs, the lessors, agents and landlords shall be liable to the tenant for one and a half times the costs of resumption of services and damages caused to the tenant as a result of suspension of services if the tenant remains in the dwelling until services are resumed. However, if the tenant elects to move to a new dwelling, the lessor, his agent, and landlord shall be liable for the costs of new services (including deposits) and moving expenses as well as the difference in rental values for one month. The tenant must, however, make a diligent effort to mitigate his damages.

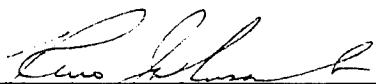
(b) Where the Utility Authority disconnects service without issuing both notices required herein; before the lapse of the curing period or additional waiting period (whichever is greater); and/or without justifiable cause, the Utility Authority shall be liable for treble damages to the customer unless the lessor, their agents, and landlords have made this request for suspension. These treble damages shall include costs of resumption of services, and other damages to customer resulting from suspension of services.

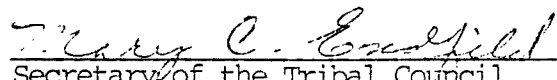
Section 10: Nothing in this Ordinance constitutes consent by the White Mountain Apache Tribe, its sub-organizations, or any agent thereof to be sued in any Court. This Ordinance does not constitute a waiver of the sovereign immunity of the White Mountain Apache Tribe for any purpose.

Section 11: Severability Clause:


If any provisions of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provisions or application, and to this end the provisions of this ordinance are severable.

The foregoing Ordinance was on August 03, 1983 duly enacted by a vote of 10 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (i) of the Amended Constitution and By-Laws of the Tribe, ratified by the Tribe June 27, 1958 and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

ACTING 
Chairman of the Tribal Council


Secretary of the Tribal Council

Approved:


Henry A. Dodge, Superintendent
Fort Apache Indian Agency
Whiteriver, Arizona

ORDINANCE NO. 136